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APR 21 2004

OFFICE OF PETITIONS

**DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)**

In re Application of :
Barchelder, Brandsberg, Weber, & Karasik :
Application No.: 10/716,210 :
Filed: November 18, 2003 :
Attorney Docket No.: 7003 :
For: LOW LOSS SUPERCONDUCTING CABLE :
IN CONDUIT CONDUCTOR :

This is a decision on the petition under 37 CFR 1.47(a), filed November 18, 2003.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on November 18, 2003 with a partially executed declaration and a petition under 37 CFR 1.47(a).

A grantable petition under 37 CFR 1.47(a) requires

- (1) a petition including proof of the pertinent facts establishing that the legal representative of the deceased inventor(s) refuses to join, or cannot be found or reached after diligent effort,
- (2) a proper oath or Declaration executed by the available joint inventor(s),
- (3) the fee of \$130 as specified in 37 CFR § 1.17(h), and
- (4) the last known address of the legal representative of the deceased inventor.

This petition lacks items (1) and (2) above.

As to item (1), Applicants have failed to establish that the legal representative of the deceased inventor cannot be located. Petitioners state that Mrs. Karasik has moved from the United States. Petitioners have provided no evidence of attempts to locate her whereabouts. Petitioners must engage in such efforts.

An affidavit or declaration of facts must be signed, where at all possible, by a person having *firsthand knowledge* of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as any inquiries of telephone directories or any extant national or regional registry, telegrams, searches of Internet databases, etc., that support a finding that the legal representative of the deceased inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

A showing of diligence is critical to obtaining Rule 47 status when a legal representative of a deceased inventor cannot be located or reached.

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 still has not been presented. The declaration contains no information for the legal representative. **Petitioners must submit another declaration that lists identifying information for all inventors, including the deceased inventor, and the legal representative. This new declaration must be executed by the signing inventors.** The identifying information must include: -- Residence, Citizenship, and Post Office. The last known residence/post office for Mr. Karasik prior to his death should be used. If Mrs. Karasik's new address cannot be discovered, petitioners should use her last known address in the United States.

Another reason the declaration submitted on November 18, 2003 is not acceptable is because the city of the deceased inventor is inaccurate. It is typed as "F rest", but should instead be "Forest". Please ensure the correct city is listed on the newly executed declaration.

An oath or declaration in compliance with 37 CFR 1.63 and 1.64 signed by the Rule 1.47 applicant on behalf of the deceased inventor/legal representative is REQUIRED. See MPEP 409.03(a).

Further correspondence with respect to this matter should be addressed as follows:

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